

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LORETTA P., et al.,

Plaintiffs,

v.

ORDER
04-CV-001A

THE BOARD OF EDUCATION OF THE
CHEEKWAGA CENTRAL SCHOOL
DISTRICT,

Defendant.

Plaintiffs brought this action against the defendant school district pursuant to the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1415, seeking a determination that they were prevailing parties in an administrative hearing and an award of attorneys fees and expenses incurred in connection with that proceeding. The case was referred to Magistrate Judge H. Kenneth Schroeder pursuant to 28 U.S.C. § 636(b)(1).

On July 30, 2004, the defendant filed a motion for summary judgment. Plaintiffs filed a response in opposition to the motion. On March 24, 2006, Magistrate Judge Schroeder issued a Report, Recommendation and Order recommending that the defendant’s motion for summary judgment be denied.

The defendant filed objections to Magistrate Judge Schroeder’s March 2006 Report, Recommendation and Order. The plaintiffs filed a response

in opposition to the objections. In the interim, the plaintiffs also filed a cross-motion for summary judgment, which the defendant opposed. This Court deferred consideration of the defendant's objections pending Magistrate Judge Schroeder's consideration of plaintiffs' cross-motion for summary judgment.

On November 27, 2006, Magistrate Judge Schroeder issued a Report, Recommendation and Order in which he recommended that plaintiffs' motion for summary judgment be granted in part, and denied in part. Specifically, Magistrate Judge Schroeder recommended that summary judgment be granted in favor of the plaintiffs declaring them to be the prevailing parties at the underlying due process hearing and that plaintiffs' be awarded a money judgment in the amount of \$7,945.25. The motion was denied to the extent that plaintiffs sought fees above that amount.

On January 29, 2007, plaintiffs filed objections to Magistrate Judge Schroeder's November 2006 Report, Recommendation and Order. The defendant filed a response on February 16, 2007. On February 26, 2007, the Court heard oral argument on the defendant's objections to Magistrate Judge Schroeder's March 2006 Report, Recommendation and Order, and plaintiffs' objections to Magistrate Judge Schroeder's November 2006 Report, Recommendation and Order.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation and Order to

which objections have been made. Upon de novo review and after hearing arguments of counsel, the Court hereby denies plaintiffs' and defendant's objections and adopts Magistrate Judge Schroeder's March 2006 Report, Recommendation and Order and his November 2006 Report, Recommendation in Order. Accordingly, for the reasons set forth by Magistrate Judge Schroeder, the defendant's motion for summary judgment is denied, the plaintiffs' motion for summary judgment is granted and the plaintiffs are awarded \$7,945.25 in attorneys fees and expenses as prevailing parties in the underlying administrative hearing.

The Clerk of the Court is directed to enter judgment in favor of the plaintiffs in the amount of \$7,945.25 and to take all steps necessary to close the case.

SO ORDERED.

s/ Richard J. Arcara
HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: March 30 , 2007